

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN METZGER and KRISTINA
METZGER, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

IMEDEX, INC., a corporation,

Defendant.

CASE NO. 15cv1919-GPC(KSC)

**ORDER GRANTING PLAINTIFFS'
COUNSEL'S MOTION TO
WITHDRAW AS COUNSEL AND
DENYING MOTION FOR
ATTORNEYS' LIEN**

[Dkt. Nos. 24, 25.]

Before the Court is Plaintiffs' counsel's motion to withdraw as counsel for Plaintiffs John Metzger and Kristina Metzger. (Dkt. No. 24.) Plaintiffs' counsel also filed a motion for attorneys' lien to recover costs. (Dkt. No. 25.) No opposition has been filed. Based on the reasoning below, the Court GRANTS counsel for Plaintiffs' motion to withdraw as counsel and DENIES their motion for attorneys' lien to recover costs.

Discussion

AMartin Law, PC and San Diego County Law Offices, counsel of record for Plaintiffs move to withdraw as counsel based on one or more grounds specified in the California Code of Professional Responsibility and the American Bar Association Model Rules of Professional Conduct. (Dkt. No. 24, David Decl. ¶¶ 4-5.)

"An attorney may not withdraw as counsel except by leave of court." Darby v.

1 City of Torrance, 810 F. Supp. 275, 276 (C.D. Cal. 1992). The trial court has
 2 discretion whether to grant or deny an attorney's motion to withdraw in a civil case.
 3 See La Grand v. Stewart, 133 F.3d 1253, 1269 (9th Cir. 1998); Stewart v. Boeing Co.,
 4 No. CV 12-5621 RSWL(AGR), 2013 WL 3168269, at *1 (C.D. Cal. June 19, 2013).
 5 Courts should consider the following factors when ruling upon a motion to withdraw
 6 as counsel: (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may
 7 cause to other litigants; (3) the harm withdrawal might cause to the administration of
 8 justice; and (4) the degree to which withdrawal will delay the resolution of the case.
 9 Curtis v. Illumination Arts, Inc., No. C12-0991JLR, 2014 WL 556010, at *4 (W.D.
 10 Wash. Feb. 12, 2014); Deal v. Countrywide Home Loans, No. C09-01643 SBA, 2010
 11 WL 3702459, at *2 (N.D. Cal. Sept. 15, 2010). Local Civil Rule 83.3(f)(3) also
 12 provides:

13 Withdrawals. (a) A notice of motion to withdraw as attorney of record
 14 must be served on the adverse party and on the moving attorney's
 15 client. (b) A declaration pertaining to such service must be filed.
 Failure to make service as required by this section or to file the
 required declaration of service will result in a denial of the motion.

16 Local Civil R. 83.3(f)(3). Here, Plaintiffs' counsel filed a certificate of service which
 17 indicates that the motion was served on their client and to opposing counsel. (Dkt. No.
 18 24 at 5-6.)

19 Counsel seek to withdraw as counsel based on one or more grounds specified in
 20 the California Code of Professional Responsibility and the American Bar Association
 21 Model Rules of Professional Conduct. No party has opposed the motion to withdraw
 22 so no prejudice has been shown. The case is in its early stages as a case management
 23 conference has not yet been held. After a review of the factors to consider on a motion
 24 to withdraw as counsel, the Court concludes that withdrawal is warranted. Based on
 25 the above, the Court GRANTS counsel for Plaintiffs' motion to withdraw as counsel.

26 Plaintiffs' counsel also filed a motion for an attorneys' lien to recover costs.
 27 Plaintiffs entered into an "Attorney Client Contingency Fee Agreement" with Travis
 28 Jang-Busby and his firm, San Diego County Law Offices and Alisa Martin and her

1 firm, Amartin Law APC. The Agreement provides,

2 Section 10. ATTORNEYS, individually and collectively, have the
3 absolute right to withdraw from the representation of CLIENT upon
4 giving CLIENT reasonable notice to secure other counsel. Instances in
5 which ATTORNEYS will withdraw would include, without limitation:
6 (a) in the event evidence discloses the claim or suit lacks merit, or is
7 economically unfeasible to pursue, or that any judgment or award will
8 be uncollectible, or (b) upon CLIENT's non-cooperation or material
9 breach of this Agreement.

10 Section 9. If employment of ATTORNEYS is terminated prior to
11 settlement or judgment and CLIENT chooses to continue to pursue the
12 case, ATTORNEYS shall be compensated for services rendered and
13 reasonable fees shall be determined to be the greater of (a) a fixed
14 hourly rate of \$650.00 per hour for attorneys and \$125.00 per hour for
15 paralegal services rendered to the date of termination and for winding
16 up and transferring CLIENT's files or (b) a percentage of the total
17 amount ultimately recovered by CLIENT in connection with the
18 matters for which ATTORNEYS were retained, according to the
19 agreed contingency fee of 40% of any recovery. Any dispute between
20 ATTORNEYS and CLIENT as to the reasonable value of services
21 following discharge or withdrawal shall be arbitrated by a neutral
22 arbitrator selected by the presiding judge of the Superior Court of San
23 Diego County.

24 (Dkt. No. 25 at 2-3.) Counsel seek reimbursement of \$3,276 in costs for mediation,
25 parking, research/contract labor and copy and printing costs. (Dkt. No. 25, David Decl.
¶ 4.)

26 “Attorney’s liens may be enforced in federal actions” and are analyzed under
27 state law. Doherty v. City of Alameda, No. 09-4961, 2011 WL 2429364, at *2 (N.D.
28 Cal. June 13, 2011). “Generally, attorney’s liens are a charge used to secure attorney
fees and expenses incurred ‘out of proceeds of a prospective judgment.’” Id. (quoting
Fletcher v. Davis, 33 Cal. 4th 61, 66 (2004)).

29 Plaintiffs’ counsel argue and the Court agrees that an attorney’s lien must
30 comply with California Rules of Professional Conduct Rule 3-300,

31 A member shall not enter into a business transaction with a client; or
32 knowingly acquire an ownership, possessory, security, or other
33 pecuniary interest adverse to a client, unless each of the following
34 requirements has been satisfied:

35 (A) The transaction or acquisition and its terms are fair and reasonable
36 to the client and are fully disclosed and transmitted in writing to the
37 client in a manner which should reasonably have been understood by
38 the client; and

39 (B) The client is advised in writing that the client may seek the advice
40 of an independent lawyer of the client's choice and is given a

1 reasonable opportunity to seek that advice; and
 2 (C) The client thereafter consents in writing to the terms of the
 transaction or the terms of the acquisition.

3 Cal. R. Prof. Conduct 3-300.

4 “Requiring the client’s informed written consent has the additional benefit of
 5 ensuring that the client truly agrees to the creation of the lien and its scope, thus
 6 making it less likely that a disagreement will arise that could lead to litigation or other
 7 action adverse to the client, and also impressing upon the client the importance of his
 8 or her consent and of the right to withhold it.” Fletcher, 33 Cal. 4th at 69.

9 Here, the language of the Agreement does not specifically provide for an
 10 attorney’s lien on any future recovery but only provides the methods by which
 11 attorneys’ fees will be compensated.¹ Section 9 of the Agreement does not establish
 12 a lien on any recovery and therefore, Plaintiffs’ counsel did not obtain their clients
 13 informed written consent because the Agreement did not fully disclose to Plaintiffs in
 14 a manner which Plaintiffs reasonably should have understood that their attorney would
 15 place a lien on any future recovery. Second, the Agreement does not advise that
 16 Plaintiffs may seek the advice of an independent lawyer. See In re Segovia, 387 B.R.
 17 773, 784 (N.D. Cal. 2008) (lien form did not comply with Rule 3-300 because it did not
 18 inform clients they may consult with an independent attorney concerning the lien).
 19 Therefore, Plaintiffs’ counsel failed to comply with Rule 3-300. Thus, the Court
 20 concludes that the Agreement does not create a lien and even if it did create a lien, it
 21 would not have been an enforceable lien. See Fletcher, 33 Cal. 4th at 71-72 (lien not
 22 enforceable because attorney failed to comply with Rule 3-300). Accordingly, the
 23 Court DENIES Plaintiffs’ counsels’ motion for attorneys’ lien to recover costs.

24 Conclusion

25 Based on the above, the Court GRANT Plaintiffs’ counsels’ motion to withdraw

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 28 ¹This provision also provides that the attorneys will be compensated only if
 Plaintiffs chooses to pursue the case. At this point, it is not clear whether Plaintiffs will
 pursue the case while proceeding pro per.

1 as attorney for Plaintiffs and DENIES their motion for attorneys' lien to recover costs.
2 The Clerk of Clerk shall indicate on the docket that Plaintiffs are proceeding pro se
3 with the following address: **John and Kristina Metzger, 6432 Olea Lane, #104,**
4 **Carlsbad, CA 92011.**

5 The hearing date set for October 7, 2016 shall be vacated.

6 IT IS SO ORDERED.

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8 DATED: October 4, 2016

9 
10 HON. GONZALO P. CURIEL
11 United States District Judge

12 cc:

13 John and Kristina Metzger
14 6432 Olea Lane, #104
15 Carlsbad, CA 92011

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